

# 11 Rape

What is called ‘rape’ in English is known by a variety of different terms in other European languages: *viol* in French, *Vergewaltigung* in modern German (*Notzucht* in older German) and *verkrachting* in Dutch. Whatever word we use it is universally acknowledged to be a crime.<sup>1</sup> Whenever we speak of it we immediately think that it occurred ‘against her will’. In a Sumerian wise saying it is referred to in the most direct terms as

Do not commit violence of the penis on a man’s daughter. The inner courtyard will get to know of it.

A later Akkadian version reads

You shall not rape the daughter of a man with violence (*ina šaggāšti naqābu*). The community assembly shall get to hear of you.<sup>2</sup>

The law-books are almost our only source of information about what happened in practice.<sup>3</sup>

A remark is appropriate here about what could be meant by the word violence. In certain laws M. Civil has suggested that the Sumerian word (*á.gar*) is concerned with trickery rather than violence, so ‘deception’ would be a better translation.<sup>4</sup> In Exodus 22:16 we indeed read ‘When a man seduces a virgin who is not yet betrothed’, the Hebrew verb that is used is *pātāh* (pi.), ‘to persuade’, and in the Mishnah in the chapter about rape a distinction is made between ‘seduction’ (*pātāh*) and ‘overpowering’ (*’ānas*). Because seduction is seen as deceptive different fines apply.

A seducer pays three amounts, a violent man four. A seducer pays for humiliation, for devaluation and then also the fine; a violent man must pay over and above this for the pain (Keth. III, 4).

---

1 G. R. Driver, J. C. Miles, *The Assyrian Laws* (1935) 36–61; J. J. Finkelstein, *JAOS* 86 (1966) 355–372; B. Landsberger, *Symbolae M. David* II (1968) 43–65; R. Yaron, *The Laws of Eshnunna* (1988) 278–285. Note that an omen predicts that an enemy country can be raped (*nāku*) ‘like a woman’; A. R. George, *CUSAS* 18 (2013) 119:38, with p. 122a.

2 B. Alster, *Wisdom of ancient Sumer* (2005) 69 Instr. Šur. 62.

3 R. Haase, ‘Die Vergewaltigung einer Frau in Rechtscorpora des Alten Orients’, *ZABR* 15 (2009) 56–64. For the sequence of the MA laws see E. Otto, *ZAW* 105 (1993) 162.

4 M. Civil, *CUSAS* 17 (2011) 256 f.

The fine to be levied was the one of fifty shekels of silver referred to in Deuteronomy 22: 28–29.

Independently E. Szlechter argued that the Akkadian equivalent (*dâšu*) means both violence and deception,<sup>5</sup> and deception also means the act was perpetrated ‘against her will’.<sup>6</sup> C. Wilcke opposes the opinion that *á.gar* and *dâšu* refer to deception and maintains that violence is meant.<sup>7</sup> As to the Akkadian verb *dâšu*, recently published texts from Mari confirm the two meanings seen by Szlechter and in some passages ‘to intimidate’ fits the context, especially in the expression *ina awātim dâšu*, ‘to exert verbal pressure’, in contrast to ‘to exert force (*ina emūqim*)’.<sup>8</sup> We will translate *á.gar* by ‘to intimidate’.

The Bible story about the rape of Tamar, a princess in David’s palace, by her brother Amnon is recounted in three phases in 2 Samuel 13:7–14: first he does not listen to her voice, then he rapes her (the verb ‘*nh* really means ‘to humiliate’), and finally he lies with her.

In Akkadian the verb *naqābu*, which literally means ‘to pierce’, is exclusively used in contexts of rape. It is cognate with the Hebrew verb *nāqab* with the same meaning, from which is derived the abstract noun *nēqēbā*, ‘female’, as used in the phrase ‘male and female He created them’ (Genesis 1:27). In cases of rape the Mesopotamian law-books are interested in deciding first whether the woman was betrothed or married, and then whether she was really raped against her will.

## 11.1 Slave-girl

Scholars think that when a slave-girl was raped at that time it was immaterial to decide whether she had agreed to sex or not. The only point to be taken into account was that the crime had reduced the value of the girl and the owner should be compensated.<sup>9</sup> The law-book of Ur-Nammu required that it was necessary to prove that the perpetrator had deceived her. The law of Ur-Nammu states:

5 M. Civil, *Mélanges M. Birot* (1985) 78, CUSAS 17 (2011) 257a; E. Szlechter, RA 61 (1967) 114 f.; S. Lafont, *Femmes* (1999) 94.

6 Lafont, *Femmes* (1999), distinguishes them in the ‘La séduction’ (p. 93–132) and ‘Le viol’ (p. 133–171).

7 C. Wilcke, *Festschrift J. Krecher* (2014) 499–502.

8 ‘Intimidate by words’: AEM 1/1 (1988) 82 no. 5:15; MARI 7 (1993) 199, ARM 14 104+:16, with Durand, LAPO 16 (1997) 559, ‘intimider’. By force: PSD A/1 51a. The substantive *dašātu* (in recently published Mari texts) exclusively means ‘treachery’.

9 Finkelstein, JAOS 86, 360a; Yaron, 281.

If a man should intimidate and deflower the slave-girl of a man, then he shall pay five shekels of silver (§ 8).

Compare this with the law-book of Ešnunna.

If a man should 'pierce' the slave-girl of a man, then he shall pay twenty shekels of silver, but the slave-girl remains her owner's (§ 31).

If the slave-girl had been the intended bride of a free man, she would be treated in the same way as an ordinary girl.<sup>10</sup>

The size of the payment varied greatly, and the amount to be paid must first be compared with the going price for a slave-girl. Although these prices differed greatly, when averages are calculated, the payments seem to have been roughly in line with the full price. In the time of Ur-Nammu a male slave could be bought for about ten shekels of silver, and a female for five to six.<sup>11</sup> In the Old Babylonian period, when the laws of Ešnunna were written, the prices were higher, and later they rose further, to between fifteen and thirty shekels of silver.<sup>12</sup> We conclude with a little caution that the compensation for the deflowered slave-girl was about the same as her sale price. Another aspect to be taken into account here is the fact that adults cost more than young slaves, and that the compensation to be paid for young girls was greater than their notional value. In the laws of Ešnunna the compensation for a slave who had been killed was set at fifteen shekels (§ 55), so the twenty shekels for the woman cited above from § 31 was a considerable sum.<sup>13</sup> Virginity was a costly commodity. It has been proposed that the number written on the clay tablet was actually forty shekels of silver, and that is why it has sometimes been assumed that this particular slave-girl was intended to be married off to a free man.

The statement 'but the slave-girl remains her owner's' at the end of Ešnunna § 31 would preclude the rapist claiming the girl for himself, seeing that he had made a compensatory payment. We see two reasons for the inclusion of this clause. On the one hand, since the fine was more than the notional purchase

<sup>10</sup> H. Petschow considers this for LE § 31; *Symbolae M. David* II (1968) 138 n. 3 ('bereits die Konkubine ihres Herrn oder als solche bestimmt oder zur Verheiratung ... an einen Dritten vorgesehen'). Cf. Landsberger, *ibidem*, 55 n. 1.

<sup>11</sup> A. Falkenstein, NSGU I (1956) 88–90 (about children: p. 85); P. Steinkeller, *Sale documents of the Ur-III-period* (1989) 135–138.

<sup>12</sup> Thus Steinkeller, 138; R. Harris, *Ancient Sippar* (1975) 341–343; C. Wilcke, WdO 8 (1976) 280 f., from Abi-ešuh on, notably for the prices for women.

<sup>13</sup> That slave was killed by a wild ox, but for a similar case in the Bible the compensation was thirty shekels (Exodus 21:32).

price it acted as a disincentive for him to purchase her, though he might have had the right to do so. On the other hand, it contradicted the obligation of a rapist to marry his victim, a common provision to be discussed later in this chapter.

An unusual text, which was used as a copying exercise in Sumerian schools, describes a lawsuit about such an occurrence.<sup>14</sup>

Lugal-melam, the son of M. has seized Ku-Ninšubur, the slave-girl of Kuguzana, brought her to a storehouse and deflowered her. After he had deflowered her, Kuguzana, her owner, appeared in the assembly of Nippur and stood before them. He said, 'L. has seized my slave-girl, brought her into the storehouse and deflowered her'. Lugal-melam appeared. He said, 'I do not know his slave-girl. I have not deflowered her'. His witnesses took the stand. They confirmed this. The assembly of Nippur appeared. They said, 'Because he deflowered the slave-girl without (permission from) the owner, Lugal-melam must pay thirty shekels of silver to Kuguzana, her lord'. The assembly have pronounced their verdict on this matter.

Here the payment imposed was even higher than that mentioned earlier. J. J. Finkelstein suggested, possibly correctly, that a degree of punishment was factored into it for not admitting the guilt and for precipitating a formal lawsuit.<sup>15</sup>

Two phrases in this text need to be commented on further. Evidence about illicit sexual intercourse always records where the incident happened, and here it was important to say that he 'brought her into the storehouse'. The location was an invariable element for proving guilt.<sup>16</sup> That is why Daniel asked for the specific tree to be indicated under which the fair Susannah is supposed to have sat. That the verdict includes the fact that the incident happened 'without permission from her owner' echoes the phrase said about a girl in Ešnunna §26, 'without permission from her father and mother'. B. Landsberger thought that this permission conversely applied to the phrase used when the rightful parties (her husband, her parents, or her owner) 'knew' how the woman was going to be treated. According to him, they could have prompted the woman to behave in this way to earn money from it, a subject to be discussed later. Finally, we should bear in mind that C. Locher considers that this lawsuit was a specimen case, not an actual event which led to legislation. He assumes that there was a case like this behind Deuteronomy 22:13–19, and he reconstructs it as such.

---

<sup>14</sup> Finkelstein, JAOS 86, 359 f.; Landsberger, *Symbolae M. David* II (1968) 47–49; Locher, *Die Ehre einer Frau* (1986) 94–107. Cf. M. T. Roth, JAOS 103 (1983) 282 (3.); M. Civil, CUSAS 17 (2011) 255 f.

<sup>15</sup> JAOS 86, 360a.

<sup>16</sup> *Symbolae David* II (1968) 61 n. 1.

## 11.2 Unmarried girl

The rape of an unmarried girl is raised in a school text containing some dark paragraphs of Sumerian law:<sup>17</sup>

§ 7. If he should deflower the daughter of a man on the street, (and) her father and her mother do not know it (?), he says ..., (and) her father and her mother shall give her to him in marriage.

§ 8. If he should deflower the daughter of a man on the street, (and) her father and her mother know it (?), (and) the rapist denies that he knew ..., he shall go [and stand] in the gate (?) of the god ...

This text gives the impression that by standing on the street the girl is acting like a prostitute and that the unsuspecting man cannot be reproached. Landsberger thinks that, because the parents in § 8 ‘know’, it means that they have put the girl to prostitution.<sup>18</sup> It may be surprising that the man in another case according to § 7 was still allowed to marry her. This is however the solution in the Middle Assyrian laws and elsewhere, where we find a comprehensive range of locations listed.

§ 55. [If a man, – (regarding) the daughter of a] man, a virgin [who] lives [in the house] of her father, her [...] is not besmirched (?), [her narrow]ness<sup>3</sup> has not been opened, she is not married, and no demand has been made on the house of her father – (if) the man has forcibly seized the girl and raped her, whether in the middle of the city, or on the plain, or at night on the street, or in a shed, or at a city festival celebration, then the father of the girl shall take the wife of the man who has slept with the girl and give her to be raped. He shall not send her back to her husband. He shall take her. The father shall give his violated daughter to her violator in marriage. If he has no wife, then the man who slept with the girl shall give a ‘triple’ of silver, the price of a virgin, to her father. Her violator shall marry her. He shall not reject (?) her. If the father does not wish it, then he shall receive the silver, a ‘triple’ for a virgin. He shall give his daughter (in marriage) to whomsoever he wishes.

§ 56. If a girl should give herself to a man, then the man shall swear the oath and they shall not take action against his wife. The man who slept with her shall give a ‘triple’ of silver, the price of a virgin. The father shall do with his daughter as he wishes.

The first law is couched in difficult language.<sup>19</sup> We follow the school of thought which understands ‘not besmirched’ as indicating that the girl was of a premen-

<sup>17</sup> YOS 1 28 § 7–8 (‘a, b’) with M. T. Roth, *Law collections from Mesopotamia*, 44. See Landsberger, 51; Finkelstein, 358, 363–365; Römer, ZAW 95 (1983) 326 f.; Lafont, *Femmes*, 113–116.

<sup>18</sup> *Symbolae David II*, 64.

<sup>19</sup> Locher, 128–154, who discusses the physiological terminology for ‘virgin’ and rape; also E. Otto, ZAW 105 (1993) 157–159.

strual age. By ‘the narrowness not yet opened’, the following phase of life would be indicated, and then there follows ‘not married’. The Mishnah speaks of raped girls from their third year of life (Keth. I, 3; III, 1 etc.). The list of places where rape could occur is not intended to define particular locations but to mean anywhere at all. That the wife of the violator should be penalized is a form of *ius talionis*, ‘an eye for an eye, a tooth for a tooth’, which we also find elsewhere in these laws. G. Cardascia remarks angrily:

It is not enough, to say that the wife is subordinate to her husband: she is no more than a part of him and the guilty person is punished in her, just as though he had been punished in his own body through mutilation. As far as we know no other ancient law renders a free person so totally deprived of his/her personality.<sup>20</sup>

Before we become really angry, it is good to read what B. Landsberger says. He sees the whole Assyrian law book as one for ‘Assyrian Professors’. That is to say it is a law-book which takes a simple statute and then expands it with supplementary circumstances, such as the physical condition of the girl and the location of the crime. Landsberger counters our anger thus:

The abuse and enslavement of the completely innocent wife of the rapist are highly sophisticated and the worst possible barbaric act. However, it appears to be the invention of the Assyrian lawgiver.<sup>21</sup>

So the barbarity is only theoretical, expressed as a possibility, as a Professor of law may have felt he had the right to do. It has been argued that similar rather theoretical casuistry is to be found in ancient Near Eastern laws dealing with how to act in cases of violence leading to *abortus provocatus*.<sup>22</sup> Cardascia in a later article showed that the Assyrian legislator by giving this punishment, to be inflicted on the wife of the rapist, accords with the rules of the *ius talionis* (see end of Chapter 31).<sup>23</sup>

Enforced marriage was a well-known solution for these situations in ancient law so that the honour of the girl could be saved.<sup>24</sup> It is documented in Biblical law.

---

<sup>20</sup> *Les lois assyriennes* (1969) 79. Cf. Locher, 151 f.

<sup>21</sup> *Symbolae David* II, 56, 63.

<sup>22</sup> J. J. Finkelstein, *The Ox that Gored* (1981) 19 n. 11.

<sup>23</sup> G. Cardascia in his article ‘Les valeurs morales dans le droit assyrien’, *Hommage à Guillaume Cardascia* (1995) (= Méditerranées no. 3) 161–170, esp. 169.

<sup>24</sup> Locher, 152 f.

When a man seduces a virgin who is not yet betrothed, he must pay the bride-price for her to be his wife. If her father refuses to give her to him, the seducer must pay in silver a sum equal to the bride-price for virgins (Exodus 22:16–17).

That he may not later renounce her is made plain in Deuteronomy 22:29.

A much older parallel which illustrates this principle was discovered some time ago. It was a treaty from 2400 BC between the cities of Ebla and Abarsal which unexpectedly has two clauses about sexual relationships. G. Pettinato thinks that the first concerned adultery with a married woman (*dam guruš*), where garments and cattle make up the fines. The second one is about a young virgin (*sikil*), which Pettinato translates as,

If a virgin is concerned, they shall observe carefully her behaviour and (listen to) the explanations of those two and he shall marry her (§ 19 [2]).<sup>25</sup>

More recently D. O. Edzard has commented on the text and thinks that it refers to normal situations that arise when people are travelling to another country. It is the payment for providing excessive and lavish hospitality, and could be entitled 'A good night in Abarsal'. This is his translation:<sup>26</sup>

§ 40. Someone sleeps with a woman (from the household) of a man; he will give a ...-garment, a ... -cloth (and) three cattle.

§ 41. If that young woman agrees (and) confirms (this), he will ... about her, he will marry her.

A case that possibly occurred in real life relates to an accusation that the mayor of Nuzi abused his power, including a complaint that he had slept (*nâku*) with a woman. This seems like rape, but he denied doing it.<sup>27</sup>

<sup>25</sup> G. Pettinato in: *Wirtschaft und Gesellschaft von Ebla* (1988) 305. Literature in Eblaitica 2 (1990) 59 f.

<sup>26</sup> D. O. Edzard in: *Quaderni di Semitistica* 18 (1992) 208. S. Lafont agrees, *Femmes* (1999) 43 n. 52, 76, 82, 95, 486; see also P. Fronzaroli, *ARET* 13 (2003) 54 no. 5 § 61–63, with p. 72.

<sup>27</sup> AASOR 16 no. 4 (SMN 13) with B. Lion in: F. Joannès, *Rendre la justice en Mésopotamie* (2000) 160 f. no. 117.

### 11.3 Married woman

We have references to the rape of wives, that is to say married or betrothed women, both of whom had the same legal status. In 1981 this law of Ur-Nammu was discovered:

§ 6. If a man intimidates the wife of a man, who is still a virgin, and deflowers her, then the male person shall be put to death.<sup>28</sup>

This wife was a virgin, by which we understand that she was as yet only betrothed. The law which follows concerns a woman who really was married (she is not said to be a virgin) and decides to commit adultery.

The laws of Ešnunna deal with both rape and deliberate cohabitation. The paragraph about rape says,

If a man has brought the bride-price for the daughter of a man, and someone else, without asking her father and mother, abducts her by force (*mašā'u*) and 'pierces' her, then it is 'a lawsuit of life'; he shall die (§ 26).

The next law concerns someone who married a daughter without any formal request to her parents, but it does not have any element of violence:

Even if she has already lived a year in his house, she is not a wife.

This situation has been interpreted as an abduction with the woman's consent, which amounts to an elopement, and many a Semitist has compared it to a form of Arab marriage involving the kidnap of one's bride. That is something that could easily have taken place in the ancient Near East.<sup>29</sup> This is typical of nineteenth-century thinking: the primitive bride-kidnapping (*Raubehe*) would have been followed by marriage by purchase (*Kaufehe*). Proof of the former practice was seen in ceremonies which still existed, where the bride hits out and walks away. This gesture is also explained as a last demonstration of her chastity.<sup>30</sup> In the laws of Ešnunna, as in the Middle Assyrian laws § 55–56, after the clauses on rape (§ 26), the possibility of the girl having consented is raised (§ 27). The law-

---

**28** M. Civil translates: 'If a mans seduces with guile a betrothed woman not yet married and takes her into (his) household, this man will be killed', CUSAS 17 (2011) 246b, with p. 255–257. 'Takes her into (his) household' is an emendation; the text offers 'deflowers her'.

**29** R. Yaron, *The Laws of Eshnunna* (1988) 279 n. 91; Landsberger, *Symbolae David* II, 64 f.

**30** Josef Henninger, *Die Familie bei den heutigen Beduinen Arabiens und seiner Randgebiete* (1943) 28–30.

book of Hammurabi puts things in the opposite order to that of Ur-Nammu and after adultery comes the following:

§ 130. If a man pins down another man's virgin wife who is still residing in her father's house and they seize him lying with her, that man shall be killed; that woman shall be released.

The verb *kabālu* D, translated here as 'to pin down', appears literally to mean 'to paralyse'. We find in the laws of Hammurabi also references to a father of a betrothed son lying with his future daughter-in-law (§ 155–156). These come under the heading of incest, which we shall discuss in the following Chapter 12.

The Middle Assyrian laws have something to say about the rape of married women.

§ 12. If a married woman goes in the town square (and) a man seizes her (and) says to her, 'I want to sleep with you', (but) she does not assent, she is circumspect, (and) with violence he seizes her (and) sleeps with her – whether they find him on the married woman or witnesses prove that he has slept with the woman – he shall be put to death; there is no punishment for the woman.

This is the only law in which it is clear that intercourse took place against the will of the woman. The next two paragraphs are about a woman in the town square who leads the man astray. Why do we read that the woman is in the town square? Elsewhere in the law-book this indicates that she was behaving like a prostitute. However, scholars argue that something else is shown here. Supposedly there was an element of chance in the rendezvous, and no scheming by the woman is insinuated. I think that we should see the reference to the town square in the same murky light shown in that other law, not a place where a lady should be on parade. This regulation is intended as a general warning to stay away from a married woman, even if you find her in the town square and you think you could take advantage. This fits in with § 14, where a married woman loiters in a drinking house, but nonetheless you must keep your hands in your pockets. Landsberger has pointed out that this is precisely the principle hammered home in the law: 'It is a strong piece of "professors' law", demanding that any potential delinquent makes sure that the woman he fancies is not married'.<sup>31</sup> Landsberger does not mention our law, but his argument fits in well with it.

The first section of § 16 of the Middle Assyrian laws is not completely preserved. It appears to concern a married woman who seduces a man 'with the ... of her mouth'. The woman was punished by her husband at his discretion, but

---

<sup>31</sup> *Symbolae David* II, 63 n. 1.

there was no punishment for the man she seduced. Cardascia thinks that there was nothing more in the seduction than some kissing (the word is supplemented by him) and not intimacy. The second part of § 16 continues the story and here the man becomes frisky and rapes the provocative housewife.

§ 16b. If he uses violence to sleep with her, they shall show that he was guilty of it (and) they shall prove it of him; then his punishment will be like that of the wife of the man.

That punishment could involve mutilation, as in § 15.

## 11.4 The locations

The laws often take into consideration the place where the incident happened, which Landsberger calls ‘crime-scene casuistry’. No reason for distinguishing different locations is found except in Deuteronomy 22: 23–27, which makes a betrothed girl guilty if she was seduced in the city, where she could have shouted for help. But if it happened in the field she was innocent, for calling for help would have been in vain. A Hittite law links up well with this.

§ 197. If a man should take a (married) woman in the mountains, it is the fault of the man and he is put to death. If however he takes (her) in the house, it is the fault of the woman; the woman is put to death. If the husband catches (the two of them) and beats them to death, there is no problem.

This means that we need now to discuss in more detail what was said about adultery at the beginning of Chapter 10. C. Saporetti explains that an incident in the mountains means that there was violent behaviour by the man and it counted as rape. An incident in the house refers to a woman who is seducing a man. The third situation would be a case of adultery, desired by both him and her. It was thought that the woman could have defended herself quite well enough at home by calling for help, which is what the wife of Potiphar did.<sup>32</sup> The Bedouin show ‘deep common sense’, according to Count C. de Landberg, saying that a woman is never obliged to have intercourse against her will, on the assumption that she restricts herself to the women’s quarters and never goes to isolated locations.

Within the city there were various places where rape might occur. For a girl or a married woman it could be on the street; for a married woman it was the drinking house or the square; and for a slave-girl it was the storehouse. The Middle Assy-

---

<sup>32</sup> Yaron, *The Laws of Eshnunna*, 280 n. 95.

ian law § 55 lists the danger spots for a virgin: the middle of the city, the field, at night in the square, in a shed, or at a fair. In Deuteronomy an incident in the city implied guilt, and one in the field implied innocence. There must have been other places that were dangerous for girls. A storage building occurs three times: the storehouse, a shed, and a warehouse (in § 55, and in a letter).<sup>33</sup> Attending a fair (literally, a festival in the city) was also dangerous and is reminiscent of the wise Sumerian advice: ‘Never trust a woman at a fair’.<sup>34</sup> In a speech by Demosthenes the marketplace and the workplace were pointed out as being places of dubious repute.<sup>35</sup> Because locations were not said to be relevant for married women one might suppose that unmarried or betrothed girls had greater freedom of movement, despite all the attendant dangers of the time, and that married women were confined to the house. We have already said that in any allegation of rape it was important to say where it happened.

A queen of the Hittites, Puduḥepa once had a nasty dream.

In a dream a number of young men wanted to take the queen behind the bath house. The queen promised (the deity) in her dream one bath house made of gold.<sup>36</sup>

What would Sigmund Freud have made of that?

## 11.5 In myths

In Sumerian myths we find the motif of a raped goddess.<sup>37</sup> In ‘Enki and Ninḥursag’ the god Enki violently raped his daughters in sequence.<sup>38</sup> When he approached the last one, Uttu, he seduced her by dressing up as the gardener and she appeared to agree. The action-packed sequel was explained as a failed union. As his punishment Enki was stricken with all sorts of illnesses. In another myth Enlil made his daughter Ninlil pregnant to the anger of her mother.<sup>39</sup> On the first occasion he used force, and subsequently he disguised himself twice to

<sup>33</sup> TCL 1 10 (the warehouse *ganīnu*) with Landsberger, *Symbolae David* II, 45f.; cf. 61 n. 1. Charpin, *Le clergé d’Ur* (1986) 471 also mentions the roof (Sum. *ūr*; either ‘roof’ or ‘lap’).

<sup>34</sup> B. Alster, *Wisdom of ancient Sumer* (2005) 92 Instr. Šur. 208; SP 11.150.

<sup>35</sup> Demosthenes 59, 67, cited in G. R. Driver, *The Assyrian Laws* (1936) 45 n. 3.

<sup>36</sup> A. Mouton, *Rêves hittites* (2007) 261f., 264 Texte 98 ii 5–10 (= 37–41). See the earlier comment by A. L. Oppenheim, *The interpretation of dreams in the Ancient Near East* (1956) 227b.

<sup>37</sup> A. Gadotti, ‘Why it was rape: the conceptualization of rape in Sumerian literature’, *JAOS* 129 (2009) 73–82.

<sup>38</sup> Gadotti in M. W. Chavalas, *Women in the Ancient Near East* (2014) 38–40.

<sup>39</sup> Gadotti, 30–33.

seduce her.<sup>40</sup> Gods were born as a result of his exploits. Enlil was also punished, and was called an unclean person and banished from the city, though in the end everything comes right for him. Were these punishments for rape (by violence or seduction) or for incest? Being banished from the city was required by the laws of Hammurabi for a father who had been lying with his daughter (§ 154). Another instance involved the goddess Inanna. As she lay resting under a tree she was seized by a gardener, a human. As a result the land suffered dreadful punishments and the gardener was condemned to execution. Even so that gardener remained famous as the person who had discovered how to cultivate the date palm, the backbone of the economy of Southern Iraq. Some see in this the reflection of the conflict between the gardener representing Southern Sumer and the northern kingdom of Akkad, with Ištar (Inanna) as its patron deity in the twenty-third century BC.<sup>41</sup>

## 11.6 The right of the first night

History has many examples of rulers who requisitioned women. In the Old Testament Abraham's wife Sarah was threatened by the kings of Egypt and Gerar (Genesis 12:11 f.). David also resorted to this mean trick to get Bathsheba to his side (2 Samuel 11:4). The most crude practice of it is referred to by the three word Latin term, *ius primae noctis*, 'the right of the first night'. In feudal medieval society various reports say lords had this right, called *droit de cuissage*. Comic operas in the eighteenth century still made jokes about it, as in Mozart's opera *The Marriage of Figaro*. In our opinion this is a form of rape.

To avoid any possible misunderstanding, when a Roman Catholic work about moral theology in the Middle Ages refers to this right, at least when it was carried out by priests, it was quite different. It was a type of tax given by newly married couples to the priest for removing the duty of being chaste during the first few nights of marriage, known as the 'Tobias nights'. At that time this was how newly weds obtained their *ius primae noctis*. Rulers required a similar sort of payment from their vassals when they married.<sup>42</sup>

---

<sup>40</sup> J. S. Cooper, JCS 32 (1980) 180.

<sup>41</sup> K. Volk, *Inanna und Šukaletuda* (1995).

<sup>42</sup> D. Gerardus Oesterle, *Consultationes de iure matrimoniali* (1942) 7–11, based on J. J. Raep-saet, *Les droits du Seigneur* (Ghent 1817). More scholars have denied the existence of this right; A. Boureau, *The Lords's First Night* (Chicago 1998).

Did this *ius* exist in Mesopotamia? In the Old Babylonian version of the Gilgamesh epic there is a description of how Gilgamesh stormed around in his city of Uruk, and the following line is cited as an example of it happening:<sup>43</sup>

He slept with the intended woman: he came first, the husband afterwards.

When later his friend Enkidu heard this he turned pale, and we do too, but people said that this was the will of the gods, and Gilgamesh's destiny. The wife was even destined for it (*aššat šimātim*). Some modern scholars see in this custom an early form of the sacred marriage between a god and a goddess, to be enacted on earth between a ruler and a woman. In this situation the woman bore the special name of the goddess of love, Išhara. The woman who happened to be chosen for this role must have felt honoured and not dishonoured. The poet would have assumed that the custom was later modified and a priestess was selected to act.<sup>44</sup>

Fifteen hundred years after this the Greek writer Herodotus narrates a very disturbing story about ancient Babylon.

The most terrible custom of the Babylonians is as follows. Every native woman once in her life had to sit down in the sanctuary of Aphrodite and have intercourse with a stranger. Many women thought it beneath their dignity to submit themselves to someone else. Because they prided themselves on their wealth, they drove to the sanctuary in covered waggons, and waited in them, while a great number of servants came after them. Most went about doing it in the following manner. In the area devoted to Aphrodite there were many women sitting with a garland of ribbons on their heads. Some came to join them and others left. Between these women were very straight paths, and strangers walked along these paths and chose someone. Once a woman had come and sat there, she could not leave to go back home until a stranger had thrown money into her lap and had had intercourse with her outside the temple. When he threw the money he had to say, 'I call on the goddess Mylitta'. Mylitta was the name that the Assyrians gave to Aphrodite. The sum of money might be of any amount. There was no way that she could refuse it. She was forbidden because the money was consecrated. She went with the first man to throw money at her, and she was not allowed to refuse anyone. When the intercourse had taken place and she had discharged her holy duty to the goddess, she went back home, and from that day onwards they might give her as much money as they wanted but they would never get her again. All the women who were blessed with beauty and a tall figure could quickly go back, but the ugly had to stay there a long time because they could not fulfil the holy law. Yes, some had to stay there even for three or four years. In a few places in Cyprus a similar custom persists (I 199)

<sup>43</sup> Gilg. P iv 32–34, now A. R. George, *The Babylonian Gilgamesh Epic I* (2003) 178:160.

<sup>44</sup> Thus W. von Soden, ZA 71 (1981) 103–106. J. Tigay, *The evolution of the Gilgamesh Epic* (1982) 176, 182f., is more cautious. According to J.-J. Glassner, ZA 80 (1990) 67, there was no religious ceremony.

Did things really happen in this way? Most scholars, beginning with Voltaire, think that Herodotus was mistaken and that he did not properly understand what happened in the ceremonial sacred prostitution of the god of love, Ištar.<sup>45</sup> It is assumed that women did this because only in this way could they pay off pledges they had made to the temple.<sup>46</sup> In Chapter 21 we will see that temple prostitution actually existed and at the end follows a partial explanation of this story. Others, mostly from outside the field of Assyriology, think that Herodotus was possibly right.<sup>47</sup> That is an idea that has led to Babylon being characterized as a fornicating whore, as found in the New Testament:

Fallen, fallen is Babylon the great, who has made all nations drink the wine of God's anger roused by her fornication (Revelation 14:8).

Finally we note some information from a Greek manuscript about new brides in Africa.

Among the Nasamones in Africa there is a custom that brides on their first marriage night have sex with all their guests. They receive presents from them. But afterwards it happens only with the bridegroom.<sup>48</sup>

A woman would have to do this only once in her life, so it is interesting to note that in the administrative texts about sacred prostitution in Sippar from the Old Babylonian period, about one thousand years before Herodotus, the names of the participants are recorded only once. Would they perhaps also ...?<sup>49</sup> We will revisit Herodotus in chapter 21, when discussing the Goddess and the Whore.

---

**45** B. Meissner, BuA II (1925) 435; J. Bottéro, *La Mésopotamie* (1987) 229. G. Wilhelm presented an overview of opinions in *Studies W. L. Moran* (1990) 505–524.

**46** K. van der Toorn, *From her cradle to her grave* (1994) 99–101. More in Chapter 21, 'Income'.

**47** F. Cumont, *Oriental religions in Roman Paganism* (1911) 246–248, n. 41; G. van der Leeuw, *Religion in essence and manifestation* (1938) 230 f. (Chapter 29, 1); W. Baumgartner, ArOr 18/1–2 (1950) 81–83, sub 5, reprinted in his *Zum Alten Testament und seiner Umwelt* (1959) 296–298; W. G. Lambert, JEOL 15 (1957–58) 196.

**48** *Paradoxographus Vaticanus 27*, translated by R. Ferwerda, *Phlegon van Tralles. Wonderbaarlijke verschijnselen* (2004) 129.

**49** J. S. Cooper in his article 'Prostitution', RIA XI/1–2 (2006) 19b.